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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/823,061

04/12/2004

Dennis Kujawski

760-183 RCE

3986

23869 7590 04/14/2008  
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EXAMINER

MATTHEWS, WILLIAM H

ART UNIT

PAPER NUMBER

3774

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/823,061	<b>Applicant(s)</b> KUJAWSKI, DENNIS	
	<b>Examiner</b> William H. Matthews (Howie)	<b>Art Unit</b> 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-34, 36 and 37 is/are pending in the application.
- 4a) Of the above claim(s) 22-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-21, 34, 36, 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 1-22-08 have been fully considered but they are moot in view of the new grounds of rejection set forth below.
2. Regarding the previous provisional double patenting rejection, Examiner hereby withdraws the rejection because the pending claims now recite the petals in more detail.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-8,10-21,34,36,37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 34 each recite "petal-like projections are non-connected". This is not described in the specification because only the "distal portions" of the projections are spaced apart from adjacent petal-like projection distal portions. Claims 2-8,10-21,36, and 37 depend from claims 1 and 34 and thus include these limitations as well.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8,10-21,34,36,37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 34 each recite the projections to be “non-connected” but they are connected at the bulbous portion second end (claim 1) or at the second end (claim 34). Thus the claims are indefinite as to the orientation of the projections with respect to the device. Claims 2-8,10-21,36, and 37 depend from claims 1 and 34 and thus include these limitations as well.

Claim 10 further recites “threadingly engaging said additional number of warp yarns from said fill yarn” which is indefinite because it appears that “disengaging” would be the correct term.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21,34,36,37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmberg US PUB 2003/0139805 in view of Nunez et al. US PUB 2003/0078650.

Holmberg disclose in figure 2 and paragraphs 63-70 an implantable woven graft conduit comprising tubular portion 122 and bulbous woven portion 124 wherein the portions are seamlessly constructed from a single piece of fabric (such as polyester,

claim 19) and the bulbous portion includes a scalloped region comprises three petal-like projections 134,136,138 that are non-connected, non-tubular, contoured, and lobate-shaped. The projections may include ravel-resistant features 132 (claim 5), a heart valve (claim 12), and edges that have been cut (paragraph 96, claim 15).

3. Holmberg disclose the conduit to be woven (paragraph 92) but lack the express written disclosure of using a greater number of warp to fill yarns to define a flat-woven pattern (claim 1,34), circumferentially crimped portions (claims 3-4), fused edges (claims 6-8), engaging/disengaging warp yarns to change the size of the woven (claims 10-11), sealing by fusing (claim 17), and using the weave pattern or materials of claims 18,20,21. Nunez et al. teach woven vascular grafts are known to include materials and manufacturing steps including providing a number of warp yarns interlaced with a number of fill yarns in a flat-woven tubular woven pattern (Paragraph 0015) utilizing a plain weave (Paragraph 0045) wherein the warp yarns and fill yarns are single ply, between 20 and 1000 denier and are comprised of polyester (paragraph 0058). Nunez further teach projections of differing size which seamlessly extend from a hollow tubular woven portion 917 by engaging/disengaging warp yarns (Paragraph 55) wherein the graft can be crimped (Paragraph 0063) and the edges can be made from a heat-fusible yarn (Paragraphs 0061-0063). Nunez teaches these techniques provide improvement over prior weaving methods because portions of any shape and size may be seamlessly woven together to provide a reduced size when compressed for implantation.

4. Therefore it would have been obvious to one of ordinary skill in the art at the the invention was made to modify the conduit of Holmberg et al. to include the materials

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and techniques taught by Nunez in order to provide a reduced size when the device is compressed for implantation.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number is 571-272-4753. The examiner can normally be reached on Monday-Friday 10-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William H. Matthews/  
Primary Examiner  
Art Unit 3774